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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,463	04/01/2004	Jurgen Koch	22735	8396

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THE FIRM OF KARL F ROSS
5676 RIVERDALE AVENUE
PO BOX 900
RIVERDALE (BRONX), NY 10471-0900

EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,463

Applicant(s)

KOCH ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 7/19/2005 is acknowledged.

Drawings

2. The drawings filed 7/19/2005 are accepted by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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5. Claims 1, 3-8, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,619,164 to Harper et al. ("Harper") in view of U.S. Patent No. 6,244,263 to Schlosser et al. ("Schlosser").

Harper discloses in Figures 1-14 an invention similar to that described in applicant's claims 1, 3-8, 12, and 13. In particular, Harper shows a burner assembly with a main burner having a ring (12) centered on an axis defining an array of outwardly open holes (36), means (24) or supplying a gas/air mixture to the ring, a small burner centered on the axis, and means (18) for supplying a gas/air mixture to the small burner. A horizontal top cap (30) is attached to the main burner and secured via fastening elements (32). These elements (32) are considered to be the projections and feet recited in claim 5. Further, it would have been obvious to one having ordinary skill in the art to have selected three of these projections since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ; see also MPEP § 2144.04(VI)(B).

Harper possibly does not disclose that the top cover plate is a generally circular disk having an outer diameter greater than the outer diameter of the small burner.

Schlosser teaches a burner assembly in the same field of endeavor as Harper. In Schlosser, the burner includes a ring and a cap (38) arranged as a circular disk and secured via projections (78), which interact with corresponding receptacles (80). The cap is sized to have an outer diameter that is greater than both an inner and outer diameter of the ring of the main burner (see Fig. 5), and would therefore also be larger than the outer diameter of the small burner of Harper.

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Therefore, in regard to claims 1, 3-8, 12, and 13, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner assembly of Harper to include the cap of Schlosser as this cap is desirably sized and shaped to assist in maintaining unity of elements of the burner head by weighing down the burner head on the burner base (see Schlosser, col. 7, lines 52-59).

6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper in view of Schlosser as applied to claim 1 above, and further in view of U.S. Patent No. 3,773,027 to Dodd ("Dodd").

Harper in view of Schlosser teach all the limitations of claims 9-11 except for a support for holding a cooking vessel wherein the support is made of glass and includes throughgoing holes.

Dodd teaches a burner assembly in the same field of endeavor as Harper. In Dodd, the burner assembly (23) includes a top glass support (26 and 28) for holding a cooking vessel above the burner (see abstract). Portion/plate (28) of this support is dimensioned such that spaces are formed between counter-top (26) and the plate (28) (see Fig. 2). These spaces are considered to be throughgoing holes.

Therefore, in regard to claims 9-11, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the assembly of Harper to incorporate the glass support of Dodd as this support forms a aesthetically pleasing and readily cleanable top surface (see Dodd, col. 1, lines 53-63).

Response to Arguments

7. Applicant's arguments filed 7/19/2005 have been fully considered but they are not persuasive. Applicant argues that there is no suggestion in Harper to include a cover plate and then reasons that rejections under §102 and §103 are impossible. However, the examiner notes that the motivation for the combination of Harper and Schlosser is found in Schlosser, which provides that a burner cap desirably functions to weigh down the burner head on the burner base.

The examiner's full analysis of applicant's claims and the proposed combination of Harper and Schlosser is articulated above. However, to summarize, applicant's invention is essentially the addition of a top cover plate to the prior art burner shown in Harper. Such cover plates are recognized in the art, as identified in Schlosser. Applicant argues that the combination proposed would not be possible, postulating that it would be necessary to cut a hole in Harper. In response, the examiner notes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the examiner considers that the combined teachings of Harper and Schlosser would suggest to a person of ordinary skill in the art to include a cover plate as taught in Schlosser on the burner shown in Harper for the reasons noted above.

Applicant's arguments concerning Dodd are also unpersuasive. Applicant appears to be arguing against Dodd individually in not showing the elements of applicant's invention. However, one cannot show nonobviousness by attacking references individually where the

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rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Dodd is cited merely to show a support for holding a cooking vessel as claimed. The presence of a small burner and larger outer burner has already been identified in the primary reference to Harper. The examiner considers that Dodd properly shows that for which it has been cited.

Accordingly, applicant's claims are not considered to patentably define over the prior art of record.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is

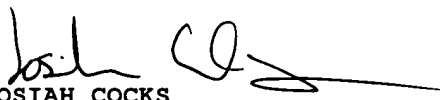
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(571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter, can be reached at (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
September 22, 2005


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749